

Watch Your Step!

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Don't get blindsided by proposed amendments to the ADA.

The federal Access Board spent the early part of this decade revamping the Americans with Disabilities Act Accessibility Guidelines (ADAAG) in order to better align the law with existing building codes and clarify specific provisions. In the process, numerous requirements became more stringent, others became more lenient and new sections were added.

The new regulations that impact the development community are covered under Title III of the Americans with Disabilities Act (ADA) addressing both commercial buildings and public accommodations. The Access Board's final version, commonly referred to as the 2004 ADAAG, has been under close scrutiny by the US Department of Justice since that time. In the meantime, the department continues to consider and evaluate final public comment that was solicited in the summer of 2008. It is expected that the final version, along with the implementation date, will be issued as early this spring. Be advised that Title III of the ADA law is expected to get a lot tougher.

Safe-Harbor Provision

The Justice Department is considering incorporating a "safe-harbor" provision into the new law offering protection to those businesses that have demonstrated through action, a willingness to comply with the ADA law as it was previously written. This provision would essentially "grandfather in" those companies in spite of the fact that the prior upgrades would now fall into non-compliance based on the adoption of the new provisions.

However, the safe-harbor provision is not without controversy and as a result, the Justice Department is considering the opposition's position in making a final determination on the proposed ruling. Unfortunately, if the provision is not implemented, that would mean bad news for those businesses that have lived by the law in the past, as they would now be forced to repeat prior upgrades at a big expense.

Proposed Modifications

Developers should be aware of the proposed changes that might mean ADA design upgrades. Consistent with current regulations, at least one accessible route is required to building entrances from public streets, public sidewalks and public transportation stops. However, the most significant proposed change in this section addresses the need to provide multiple routes in the case where the site has multiple arrival points. If a shopping center includes boundary streets with sidewalks and bus stops, then an accessible route must be provided from both. In order to accommodate additional accessible routes, the design typically cuts through large parking lots, resulting in diminished parking spaces or landscaped areas. Of course, these types of zoning regulations must be met in addition to the ADA requirements, possibility warranting increased land area. Limited exceptions are under consideration, however, the majority of shopping centers and malls, along with most large commercial developments must still provide the additional routes based on the proposed law.

The size of the accessible parking spaces and access aisles are not proposed to change, however the number of van accessible spaces increases in the new code and there is a change in the shared access aisle regulation. In some cases the proposed law would require a dedicated, as opposed to a shared access aisle.

Van accessible parking spaces are required to be a minimum of eight-feet wide with an eight-foot access aisle; standard accessible parking spaces must be at least eight-feet wide with a five-foot access aisle. The universal design allows all accessible parking spaces to be used as van spaces if designed with an 11 foot width and a five-foot access aisle. Some states, such as Florida, exceed the universal design and require a 12 foot wide accessible stall with a five-foot access aisle. The federal provision for the number of van accessible spaces is currently one van accessible for every eight accessible spaces required. This provision is increasing to require one van accessible parking space for every six accessible spaces provided, though both currently require a minimum of one van accessible space.

Also, the current regulation allows access aisles for accessible parking spaces to be shared, and while that provision remains, an exception for angled parking will require the access aisle to be located on the passenger side. In the event that large shopping-center developers are seeking to control traffic flow by incorporating angled parking, additional space in the parking field will be required.

This requirement will also have an impact on the size of outparcels designated for quick-service restaurants. As many have drive-thru elements, there is a need to incorporate one-way traffic flow on-site resulting in angled parking. The federally-proposed mandate proposes that each accessible space have its own access aisle. Given the need to connect an accessible route to the public way and have at least one additional access aisle, up to two parking spaces are absorbed. This increases the challenge of fitting all the zoning requirements such as minimum parking, minimum open space and landscaping requirements on a small outparcel. This may result in the need to carve out slightly larger outparcels in order to comply with all the regulations.

State and Federal Consistency

There are numerous states that have adopted the federal law and are currently using the ADAAG as a base design requirement. However, often state law goes beyond the incorporation of the federal design guidelines by imposing even more stringent standards with the addition of a number of accessibility requirements that exceed the federal mandates.

Expect confusion to be rampant among designers and reviewing agencies during the time period when the state laws have not yet been updated to be consistent with the new federal guidelines. For example, since the Florida Building Code's accessibility chapter is incorporated into the state statutes, the state will be required to take legislative action in order to adopt the new federal regulations. In states where legislative action is needed to adopt the new ADAAG requirements, the process may not unfold quickly and as a result, facility designers and code enforcement officials will find themselves in a difficult predicament. In the case where the new federal regulations might reduce the requirement for a particular accessibility feature, if a state's accessibility guidelines call for a more stringent interpretation, the state law will rule. For example, the proposed federal regulations eliminate detectable warnings from curb ramps, but until Florida laws officially adopt the new federal standards, the detectable warnings on curb ramps will still be required. Each state may handle this transition differently; details should be confirmed at the local and state level prior to the design phase.

Detectable Warning Placement Remains Unpredictable

The placement of detectable warnings, typically in the form of truncated domes, is undoubtedly one of the most misunderstood areas of the current ADAAG. The intent of the warnings is to alert a person with visual impairment to a hazardous area; the raised domes are easily detected with the use of a cane.

These detectable warnings are required on transportation platforms, on curb ramps, and in the case where the accessible route penetrates a vehicular hazardous area. However, since the definition of vehicular hazardous areas has remained open to a wide array of interpretation, the placement of the detectable warnings is often unpredictable from one location to another. For example, one site may provide detectable warnings at the end of the access aisles, the head of parking spaces or on the slope of recessed sidewalks, among others; another site may not provide this feature in these locations at all due to the inconsistency of the ADAAG as it currently reads.

For example, if the accessible route from the public sidewalk intersects a drive aisle in the parking lot, then it would be appropriate to install detectable warnings on both sides of the driveway. This would ensure that those with low visual acuity are made aware of dangerous areas prior to entry. However, the law is murky regarding the definition of a "vehicular hazardous area"; so it's unclear whether or not a parking space and/or access aisle would fall into that category. Many claim that the access aisle for accessible parking is a loading/unloading area and walking route, therefore not used for vehicles; if so, then detectable warnings would not be required between the accessible parking and the sidewalk at the head of the accessible parking spaces. At the same time, some designers will choose to add detectable warnings at the head of the accessible parking spaces under the auspices that they should be considered hazardous since vehicles are moving within the parking space.

The proposed 2004 regulations address this maze of confusion by eliminating the requirement of detectable warnings completely, with the exception of transportation platforms. However, this proposed modification may not solve the problem. Independent of the Department of Justice (DOJ), the Department of Transportation (DOT) has formally adopted the 2004 ADAAG regulations; however, DOT chose to keep the detectable warning requirements for curb ramps in the public right-of-ways (ROWs). As a result, DOT requires detectable warnings on curb ramps in the ROWs but this would not be required by DOJ on private commercial property,

The lengthy waiting period for the issuance of the final ruling by the US Department of Justice for the new Title III ADA law regulations is nearing closure. In the interim, business owners, land developers, civil engineers, designers, contractors and building officials should become familiar with the proposed changes for existing commercial facilities and public accommodations, as well as alterations to existing facilities and new construction projects. The modifications could be substantial; both small and large business owners and developers across the board will need to address both financial and legal considerations in preparation for the newly imposed ruling. Unfortunately, the law will be inherently fraught with confusion relevant to the transition and application of the current and new law. SLDT

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